

MINUTES OF THE MEETING  
OF THE  
BOARD OF PHARMACY

July 25, 2005

**ROLL CALL**

Richard Zarek, R.P., Chair, called the meeting of the Board of Pharmacy to order at 8:00 a.m.. in the Staybridge Room of the Staybridge Suites, located at 2701 Fletcher Avenue, Lincoln, NE. Copies of the agenda were sent to the Board members and other interested parties prior to the meeting. The following Board members answered the roll call:

Richard Zarek, R.P., Chairperson  
C. Curtis Barr, R.P., Vice-Chairperson  
Kevin Borchert, R.P., Secretary  
Roger Kaczmarek, R.P.  
Linda Labenz

A quorum was present and the meeting convened. Also present from the Department were: Becky Wisell, Section Administrator; Cecilia Curtis-Beard, Credentialing Specialist; Pharmacy Inspectors - Mike Swanda, R.P., Ronald Klein, R.P., and Tony Kopf, R.P.; Jeff Newman, Investigator; and Lisa Anderson, Assistant Attorney General.

**ADOPTION OF AGENDA**

**Additions, Modifications, Reordering and Adoption of Agenda**

Barr requested that the Mail Service application from Dawn National Pharmacy, Inc., be removed from the consent agenda for discussion. Wisell informed Board Members that an additional item was added on the Pharmacy Technician Manuals for approval by the Board. Labenz moved, seconded by Barr, to approve the agenda, as amended, with the Chair having the authority to rearrange as needed. Voting aye: Barr, Borchert, Kaczmarek, Labenz, Zarek. Voting nay: None. Motion carried.

**Adoption of Consent Agenda**

Barr moved, seconded by Labenz, to approve the consent agenda as amended. Voting aye: Barr, Borchert, Kaczmarek, Labenz, Zarek. Voting nay: None. Motion carried.

**Disciplinary Information – Actions Taken/Pending CONSENT**

Name	Actions Taken and/or Pending	Alleged Violation
Kohll, Louis	Petition for Disciplinary Action 5-5-05  Pending settlement	Plead guilty to one federal count of mail fraud, a felony, for mailing a check to a closed-door contract distributor, to obtain pharmaceuticals for Unicare & diverting these drugs into inventories of K.P & H. retail pharmacies.
Kuhlenengel, Linda	Second Amended Petition for Disciplinary Action & Temporary License Suspension 5-11-05  Five year probation with a 6-month license suspension 6-3-05	Defendant was found by her son laying on the floor unconscious. Was screened at emergency room & found positive for barbiturates. Diverted drugs from employer.

Potmesil, Howard Shannon	Petition for Disciplinary Action & Temporary License Suspension 6-30-05  Order for Temporary License Suspension and Notice of Hearing 7-1-05	Misrepresentation of material facts in procuring a license, theft of pharmaceuticals from place of employment, possession of Ativan for own use without a prescription, admitted to hospital for manic-depression, reported to emergency room staff that he may do harm to himself and family.
Torczon, Deborah	Petition for Disciplinary Action 4-27-05  Order on Agreed Settlement 5-6-05 – 1 year probation	Error in filling a prescription, paid an insurance settlement payment and failed to file a mandatory report.

#### **Non-Disciplinary Information – Actions Taken/Pending – Consent**

<b>Name</b>	<b>Actions Taken and/or Pending</b>	<b>Alleged Violation</b>
Boston, Barbara	Assurance of Compliance 5-31-05	Dispensed a prescription for Lamictal 25mg chewable tablets. The prescriber authorized Lamictal 5mg chewable tablets. Pharmacist is responsible for conducting a prospective drug utilization review for each prescription prior to dispensing.
Braatin, Marvin	Assurance of Compliance 7-19-005	Internal audit discovered substantial loss of promethazine VC with codeine. Could not account for the loss.
Kelliher, Robert G.	Assurance of Compliance 5-20-05	Dispensed more than 12-months after the prescription had been authorized by the physician.

#### **Pharmacy Technician Manuals – (1) CONSENT**

#### **PHARMACIST CPAP/BiPAP – Marcy Wyrens, Chair of the Board of Respiratory Care**

Marcy Wyrens spoke representing the Board of Respiratory Care on C-PAP/BiPAP and the relationship to pharmacists. C-PAP and BiPAP are non-invasive but are classified as mechanical ventilation, both involving flows, pressures and volumes. The Board of Respiratory Care is not concerned about pharmacies selling the C-PAP/BiPAP equipment; however, they are concerned that patients receive appropriate instruction and assessment to ensure patient understanding. Based on a study that was conducted by the Board of Respiratory Care in the State of Nebraska, there is a 76% failure rate if the patient does not understand what they are doing. The pharmacist does receive some mechanical ventilation training; however, that training would be basic and does not lend itself to the assessment and instruction that is necessary to be successful.

Zarek stated he spoke to a home health store regarding the procedure of obtaining a C-PAP. It was explained to him that a respiratory therapist or a prescriber would assess the patient and write a prescription with the recommended volume. They would then provide the C-PAP/BiPAP and also set it up. Zarek stated he was informed that anyone could set it up. Wyrens said that the Board of Respiratory Care Practice is currently addressing a couple of those situations regarding unlicensed and untrained people. Anyone can sell the machine, supplies and take the machine to the patient, which are not issues. What the Board is concerned about is assuring that the patient is assessed, and that everything is fitting and working correctly so the patient can be successful in their treatment. Most durable medical equipment (DME) companies have respiratory care practitioners that assess the patient and drivers that deliver the equipment. However, some are still working on the instruction and training issues. They are hoping that the patient has been appropriately assessed and trained prior to delivery of the C-PAP/BiPAP machine.

Zarek then added that the person working at the home health facility stated she and other employees were instructed on how to set the level of airflow on the machine. Also, the patient could obtain the equipment through the mail. The company would then speak with the patient over the phone and have the patients set the airflow level on the machine themselves.

Wyrens said anyone could count out pills and order their medication from Canada. The Board of Respiratory Care Practice does not believe that is the best care for the patient. It is not right what some of the DME companies are

doing. It requires mechanical ventilation and a licensed individual who is appropriately trained to administer the treatment.

Barr asked what was her perspective on long-term care facilities that order C-PAP's from various places including pharmacies. What does she think about these facilities that have nursing personnel that set up the airflow level on the machine and assess the patient. Wyrens stated that they have had some discussion with the Board of Nursing regarding mechanical ventilation. Some nursing curriculums do address mechanical ventilation. The LPN curriculum does not address mechanical ventilation, but they do have the ability to receive direct supervision/direct observation from the RN, who takes that responsibility. The issue is appropriate assessment and training.

Kaczmarek asked Wyrens if she has seen problems with patients who have not received proper training, due to mail service. Wyrens stated equipment is not tracked unless the patients come into the sleep centers across the state. She has spoken to various sleep centers and has found that patients who are not properly trained are not successful with C-PAP and go on to need surgery.

Kaczmarek asked if the Board of Respiratory Care Practice foresees any danger or problems to the general public because of the way products can be given to patients. Wyrens believes there are but that is not their primary focus because there are issues with any medical device that is not used appropriately. What is important is the added cost when the respiratory care practitioner has to come back because the patient was not appropriately trained.

Barr asked if there were any patients that had unfavorable outcomes or who were caused harm due to inappropriate training. Wyren explained that there were two to three cases, one in which a patient was given a C-PAP but was never trained and later expired. The patient received the equipment from a DME. Barr stated that it boils down to scope of practice. A pharmacist should not be practicing in this area without sufficient knowledge and without being trained by a respiratory care practitioner. At Creighton there is a full semester course related to assessments.

Wyrens added that there should be an on-going relationship between the pharmacist, the respiratory care practitioner and the company that sells the C-PAP. Barr added that pharmacists are trained to follow-up whether it's a drug or device. All are in favor of positive patient outcomes whenever possible and in modifying negative ones where they can.

Wyrens explained the follow-up process that is used to ensure patient success. The Board thanked Wyrens for providing this information and encouraged continued collaboration between the two boards.

Wyrens left the meeting at 8:35 a.m.

#### **INVESTIGATIONAL REPORTS – CLOSED SESSION**

Barr moved, seconded by Labenz, to close the session at 8:35 a.m. to receive investigational reports, disciplinary reports, and controlled substances audit reports. Voting aye: Barr, Borchert, Kaczmarek, Labenz, Zarek. Voting nay: None. Absent: None. Motion carried.

#### **DISCIPLINARY REPORTS – CLOSED SESSION**

Ruth Schuldt, Compliance Monitor, joined the meeting at 9:45 a.m.

#### **CONTROLLED SUBSTANCES AUDIT REPORTS – CLOSED SESSION**

Labenz moved, seconded by Barr, to reopen the session at 11:15 a.m. Voting aye: Barr, Borchert, Kaczmarek, Labenz, Zarek. Voting nay: None. Absent: None. Motion carried.

Meeting observers included Ronald Hospodka, R.P., Creighton University School of Pharmacy and Allied Health Professions, Charles Krobot, R.P., University of Nebraska College of Pharmacy; Joni Cover, Executive Vice-President of Nebraska Pharmacists Association (NPA); Roseann Virgil, Nebraska Healthcare Association; Robert Lassen; Stephanie Perrien, Tim Decker and Brian Williams, Home Prescription Services.

#### **DISCIPLINARY INFORMATION – ACTIONS TAKEN/PENDING – CONSENT –OPEN SESSION**

## **APPROVAL OF MINUTES**

### **May 9, 2005**

Barr moved, seconded by Kaczmarek, to approve the minutes from May 9, 2005. Voting aye: Barr, Borchert, Kaczmarek, Labenz, Zarek. Voting nay: None. Motion carried.

### **July 7, 2005**

Barr commented that on page 3 at the bottom in the heading, the title for Charles Krobot is incorrect. The title should state "Associate Dean", rather than "Association Dean."

Labenz moved, seconded by Kaczmarek, to approve the minutes from July 7, 2005, as amended. Voting aye: Barr, Borchert, Kaczmarek, Labenz, Zarek. Voting nay: None. Motion carried.

## **APPLICATION REVIEW – CONSENT**

### **Mail Service Pharmacy (1) – CONSENT**

Barr moved, seconded by Borchert, to deny the Mail Service application by Dawn National Pharmacy, Inc., due to an incomplete application. The application does not indicate that the pharmacy employs a Nebraska licensed pharmacist which is now required by the Mail Service Pharmacy Licensure Act. Voting aye: Barr, Borchert, Kaczmarek, Labenz, Zarek. Voting nay: None. Motion carried.

### **Pharmacy Technician Manuals (1) - CONSENT**

## **PETITION FOR REMOVAL OF LIMITATIONS – GYU KIM, RP**

Borchert moved, seconded by Labenz, to not reduce or remove the probationary terms from Gyu Kim's pharmacist intern registration based on the initial severity of his conviction and the short time frame that Mr. Kim has been on probation. Voting aye: Barr, Borchert, Kaczmarek, Labenz, Zarek. Voting nay: None. Motion carried.

## **WORKING LUNCH WITH DISCUSSION OF ITEM 12**

## **ALL HEALTHCARE RELATED BOARD MEMBERS MEETING**

Wisell stated that the All Healthcare Related Board Member meeting was held on June 10<sup>th</sup>. Three of the Board of Pharmacy members were able to attend. The focus of the meeting was to obtain comments from all the Boards on the proposed ULL rewrite for 2006. No revisions have been made in the draft at this point, but there will be a revised draft in August or September, and there will be two more public meetings to obtain input on the revised draft. The plan is to introduce the bill in the 2006 Legislative session.

Helen Meeks and David Montgomery are the co-sponsors of this project and are willing to meet with individual Boards. The Board of Pharmacy would like to invite Helen or Dave to attend the September Board of Pharmacy meeting in Omaha, if their schedules permit.

## **LEGISLATION**

### **2006 Legislative Update**

### **Uniform Licensing Law (ULL) Rewrite**

Wisell reviewed with the Board comments that were received at the All Healthcare Related Board Member meeting regarding the ULL Rewrite. Wisell asked for the Board's position on any of the proposed changes in the ULL.

For reinstatement following disciplinary action, it is being proposed to eliminate the hearing before the Board and just have the hearing before the Department. The Board disagreed with the change to not have the hearing before the Board regarding that particular profession. The initial hearing should be with the people that are in the same

profession as the licensee rather than holding the hearing before the Department. The Board recommended that the current language remain the same.

It is being proposed to increase the public membership on boards to 2 public members if the board consists of 10 or less members, and to increase to 3 public members if the board consists of 11 or more members. The Board disagreed with this proposed change unless another pharmacist was added to the Board. If a public member is added, then a professional member should also be added. Wisell stated that if the Board of Pharmacy wants to add another professional member to the Board, this change should be included in the Pharmacy Practice Act. The specific language from the current ULL pertaining to the hospital member on the Board of Pharmacy should also be included in the Pharmacy Practice Act.

It is being proposed that professional members must be credentialed for five years preceding appointment, must maintain an active credential, and must continue to actively practice while serving as a Board member. Active practice has been defined as devoting a substantial portion of time to rendering professional services. The Board believes that a retired person would be able devote more time to the Board and could be a valuable asset to the Board. The Board of Health can determine whether the person could be an effective board member. An additional professional member on the Board of Pharmacy could help with the volume of activity that is required of the current Board members. It was also pointed out that active participation on a board could take away from the amount of time the board members can actively practice.

It is being proposed to eliminate the Letter of Concern as an option for boards in making recommendations regarding investigation reports. The Board believes that there needs to be a way for boards to communicate with licensees in a non-disciplinary manner to share concerns about practice situations. The proposal still includes the non-disciplinary assurance of compliance.

It is being proposed to make a disciplinary revocation permanent. There would be no opportunity for reinstatement of the license after a disciplinary revocation. The Board disagreed with this proposal because people can be rehabilitated. Hospodka asked whether a person whose license was revoked could apply for a new license in the future. Wisell said that proposed language would not allow for reinstatement from a revoked status, and she does not believe the intention was to allow for that person to re-apply for a new license.

The Board commented that the definition of being a member of the healing arts is being deleted. It is important to retain this definition so that pharmacists are identified as providers of medical care in the context of Medicare. Wisell commented that if the term is not used in the ULL, then it could be included in the Pharmacy Practice Act if references to the healing arts are included in the Act.

### **2005 Legislative Update**

LB 117 passed in the 2005 Legislature and will become effective September 4, 2005. This legislation will require products containing pseudoephedrine to be maintained behind the counter. Consumers must be at least 18 years old to purchase these products, will be required to provide identification, and will be limited to certain quantities of these products within a specific timeframe. Many pharmacies have already moved a lot of their pseudoephedrine products behind the counter.

Krobot asked for clarification on the identification requirement of LB 117. Will consumers be required to produce identification every time they want to purchase products containing pseudoephedrine? The Board responded that the language of the bill states "shall display" identification which means that identification is required every time. This should be included in the Board of Pharmacy newsletter.

LB 382 passed in the 2005 Legislative session and was approved by the Governor on May 9, 2005. It will become effective September 4, 2005. This legislation included several changes in the statutes pertaining to pharmacy, including electronic signature for prescriptions.

Borcher said there was a question on whether long term care facilities would now be able to fax prescriptions to a pharmacy without the pharmacist being required to call for a verbal order.

Hospodka asked for clarification regarding LB 382. In a long-term care facility, if a doctor calls in a medical order, the nurse acting as an agent could reduce the medical order to writing and then fax the medical order to a pharmacy.

According to a notice provided by the Board of Pharmacy in July 2004, this would have to be considered an oral prescription. The pharmacy would have to call the doctor to verify the prescription prior to dispensing the medication. Based on the language in LB 382, is this same practice still required? Language in LB 382 states that a medical order, transmitted by facsimile or electronic transmission, which is not signed by the practitioner shall be treated the same as an oral medical order. Does the language in LB 382 remove the requirement for oral communication? If so, does that apply to controlled substances in schedules III – V?

Wisell mentioned that this issue was previously discussed with Roger Brink who reviewed the statutes and helped draft the notice of the Board in July 2004. She recommended that Brink be consulted on the impact of LB 382 on the issue of faxed prescriptions prior to the Board communicating any official position on these questions. Once a position is determined, it should be communicated to all licensees in the Board of Pharmacy Newsletter. Cover requested that the Board's position on this issue be sent to all the prescribers as well as all the pharmacists across the State.

Zarek stated that he would like to receive practice questions in writing in the future.

### **Practice Act Changes**

Wisell reviewed proposed practice act changes with the Board. Language from the ULL that is specific to pharmacy is being moved to the Pharmacy Practice Act. The language requiring pharmacy inspectors to be licensed pharmacists is being eliminated from the ULL, but it will be included in the Pharmacy Practice Act. Board members should notify Wisell of any further changes they would like to see in the Pharmacy Practice Act.

Zarek informed the members that the National Association of Boards of Pharmacy (NABP) would soon change its requirement to maintain your original state of licensure. Barr commented that NABP does not require this, but the decision is left to the individual states. There are three states that currently have this requirement.

Clarification was requested regarding whether pharmacy technicians could receive oral medical orders from a practitioner or the practitioner's agent for refills. Zarek stated that pharmacy technicians are only permitted to receive oral medical orders for refills if nothing has been changed in the original medical order. Borchert requested that the Board discuss this in more detail at a later meeting.

### **REGULATIONS UPDATE**

#### **172 NAC 128 Regulations Governing the Practice of Pharmacy**

Wisell informed the Board that the Board of Health approved the 172 NAC 128 Regulations Governing the Practice of Pharmacy at the meeting on July 18, 2005. The regulations are being submitted to the Office of the Attorney General and must then be presented to the Governor for approval. The Department is hoping for these regulations to be approved before December 1, 2005, when the 2006 pharmacist renewal notices must be mailed out so that the reduced renewal fee of \$75.00 can apply.

#### **175 NAC 8 Regulations Governing Licensure of Pharmacies**

Wisell informed the Board that the Board of Health reviewed the 175 NAC 8 Regulations Governing Licensure of Pharmacies at the meeting on July 18, 2005. These regulations are also being submitted to the Office of the Attorney General for review.

#### **181 NAC 6 Cancer Drug Repository Program Regulations**

Wisell reported that LB 331 was passed in the 2005 legislature and will become effective September 4, 2005. This legislation revised the Cancer Drug Repository Program Act to require the Department to establish and maintain a participant registry for the program and to make the registry available to the public. The Board has previously approved the draft regulations based on this legislation, but the public hearing on these amendments has not yet been scheduled. Barr commented that he would like the registry to be available to patients soon.

### **172 NAC 129 Delegated Dispensing Regulations**

The Board reviewed the revisions to the latest draft of the 172 NAC 129 Delegated Dispensing Regulations that had been made pursuant to the Board's comments at the last Board of Pharmacy meeting. Board members commented that the draft should be shared with all of the stakeholders prior to setting the draft regulations for a public hearing. The stakeholders should be given 15 days to review the latest draft and to provide comments of any major concerns. If there are no concerns submitted after 15 days, the regulations should be set for public hearing. If concerns are submitted, the concerns should be brought back to the Board.

Barr moved, seconded Labenz, to approve regulations as they were before the discussion. Voting aye: none. Voting nay: Barr, Borchert, Kaczmarek, Labenz and Zarek. Motion denied.

Barr moved, seconded by Labenz, to approve 172 NAC 129 Delegating Dispensing Regulations with the following amendments: 1) keep the reference that controlled substances cannot be dispensed based on a Delegating Dispensing Permit; and 2) clarify with Diane Hansmeyer that the proper terminology for a "Respiratory Therapist" is "Respiratory Care Practitioner" and change such references throughout the regulations, also allowing stakeholders a 15-day period to provide comments. Voting aye: Barr, Borchert, Kaczmarek, Labenz and Zarek. Voting nay: none. Motion carried.

### **PRESCRIPTION DRUG MONITORING PROGRAM (PMP) GRANT**

Barr spoke with the Louisiana board regarding their PMP grant. Barr stated that he is still waiting to hear from the Iowa board and will contact the West Virginia board also. Klein added that he attended the PMP meeting in Washington and they discussed that it is cheaper to keep track of data in-house than to rely on an outside entity. Kaczmarek stated that there would be an advantage to having software that is compatible to the software used by the Iowa board. Kaczmarek also stated that the discussion at the Washington meeting included contracting with computer vendors. The Board should begin writing the grant so that it can be submitted by the end of the year. Kaczmarek added that he thought the Iowa board would be willing to work with us because of the common border. Klein mentioned that the grant includes \$50,000.00 for planning and \$250,000.00 to implement and that the application must be in by January 31, 2006. Barr said he would contact the Iowa board again and will start writing the grant. **Agenda Item: PMP Grant**

### **PATIENT SAFETY RFP**

Barr moved, seconded by Labenz, to rename the Patient Safety Grant to the "Dyke Anderson Patient Safety Grant." Voting aye: Barr, Borchert, Kaczmarek, Labenz, Zarek. Voting nay: None. Motion carried.

Barr stated that the announcement of the available grant should be placed in the newsletter and a copy of the newsletter mailed to Dyke Anderson's wife, Jan.

### **PHARMACIST MANPOWER SURVEY CONTRACT**

Wisell reported that the contract has not yet been signed. The Department is pursuing one combined contract with the Health Professions Tracking Center (HPTC) for all of the services they provide to the Department. David Lawton is the staff person responsible for negotiating the contract with HPTC. Lawton had told Wisell that the Department has the capability to survey through the faxing system that was established for bioterrorism purposes. Surveys through this system may not reach every individual pharmacist, but they would reach licensed pharmacies, hospitals, and laboratories. If the Board's Pharmacist Manpower Survey has a list of questions, it could possibly be cheaper than the survey that is currently being done by the HPTC.

Barr stated that it needed to be a dual survey for both pharmacists and pharmacies and that the data needs to match and be corrected and updated yearly. Monies spent last year were actually in lieu of monies Dr. Raymond said he would give this year from the bioterrorism funds, if the Board added questions pertaining to bioterrorism to the survey. The database and survey have become familiar to pharmacists, which is good. This makes it easier for the pharmacist to go through pages and update their information. The Board wants to consider this option next year when the funds will actually come from the Board's budget. Wisell stated that a signed contract must be in place before HPTC starts the survey.

## **CREDENTIALING REVIEW FOR REGISTRATION OF PHARMACY TECHNICIANS**

Zarek mentioned that the next meeting is scheduled for August 4<sup>th</sup> to review comments from the public hearing and decide whether the committee is ready to write a report. Zarek commented that there have not been any major objections. Zarek explained that documentation of the necessity to regulate pharmacy technicians has been an issue, but the committee's concerns about the lack of documentation have decreased.

## **ACPE DRAFT REVISED STANDARDS AND GUIDELINES – INVITATION FOR COMMENTS**

ACPE has asked for comments on the draft ACPE Revised PharmD Standards and Guidelines. The ratio of pharmacist to intern has been a big issue. It has been recommended that there be a 1:1 ratio with pharmacist and intern. Barr said Creighton has a 2:1 ratio, and if the preceptor is faculty, it is a 4:1 ratio. He also added that with a 4:1 ratio, the students actually learn from each other, which he feels is a great experience. The new guideline would not allow the students to have this opportunity to work together as a group and learn from each other. Barr will draft comments and bring to the next meeting so comments can be submitted before the November 1, 2005, deadline.

**Action Item: Barr will draft comments and bring to the next meeting. Agenda Item: ACPE Draft Revised Standards And Guidelines – Invitation For Comments**

## **DECLARATORY ORDER REGARDING PROVISION OF DRUGS TO PATIENTS UPON DISCHARGE FROM HOSPITAL**

At the last meeting, Roger Brink, Department Legal Counsel, had asked the Board for input on a request to the Department for a declaratory order regarding the provision of drugs to patients upon discharge from a hospital. The declaratory order was issued on May 18, 2005, and copies of the final order were provided to the Board. The Board requested that this should be included in the newsletter to make pharmacists aware.

Hospodka asked for clarification on several points in the declaratory order and asked whether there was a process to obtain such clarification. He asked about transfer warnings, whether RNs or LPNs would be allowed to dispense medications from hospital emergency rooms, what was considered “reasonable access” to a pharmacy, whether there are any labeling requirements for the drugs that are leaving the hospital, and whether the declaratory order pertains to delegated dispensing?

The Board discussed the questions raised by Hospodka but will need to consult with Brink regarding any process for clarification of the declaratory order.

## **AUTOMATED DISPENSING SYSTEMS**

### **DEA Ruling on Automated Dispensing for Surplus Controlled Substances at Long Term Care Facilities**

The DEA Ruling allows a Pyxis machine to be used for controlled substances in long term care facilities. Borchert explained how an automated Pyxis machine works. A mechanism limits access to different medications and different modes of administration for various licensure types. The use of an automated dispensing machine can reduce medication errors. The machines also track who accessed the medication. The machine can also be used as a stock cabinet or as an emergency drug box. These machines have an advantage over the traditional emergency drug box because of control over accessibility and documentation of who accessed the medication. Zarek mentioned that the existing statutes would need to be changed to allow for this, so this topic should be added to the list of future legislative changes. Zarek recommended utilizing the mailbag through NABP to determine which states are allowing automated dispensing machines in long term care facilities. **Action Item: Send NABP Mailbag to determine which states allow automated dispensing machines in long term care facilities.**

## **Future Demonstrations**

A vendor had submitted information about their product to the Board for review and offered to make a presentation to the Board. The Board responded that kiosks are good for convenience, but they are counterproductive to public health. Also, the Nebraska Pharmacy Practice Act will not allow kiosks.

## **PRACTICE QUESTIONS**

Hospodka explained that there is a problem involving patients in long term care facilities whose insurance coverage provides prescription benefits, but the long term care facilities where they reside require medications to be packaged by a contracting pharmacy in unit-dose containers for administration by the facility. Hospodka asked the Board to address the following questions regarding the repackaging of medication dispensed to patients in a long term care facility:

- Can these medications be repackaged and dispensed in modified unit dose systems?
- Can the pharmacy provide dispensing services to long term care facilities do this as long as the drug can be positively identified?
- Is the pharmacy accepting some liability by doing so?

Hospodka said the Board had previously determined that repackaging of medication could occur if the medication could be positively identified and that the pharmacy could charge a reasonable fee for repackaging. Hospodka mentioned that the Board had also previously determined that prescription drug samples could be repackaged. Hospodka stated he did not remember the Board addressing the issue of the labeling requirements.

The Department had recently addressed this same issue and had determined there was a concern with appropriately labeling the repackaged medications. The repackaged medication must have the name, address and telephone number of the original dispensing pharmacy on the label. The Department had provided the following options:

- The dispensing pharmacy could issue a duplicate label with the original prescription that the second pharmacy could affix to the repackaged medication for use in the long term care facility; or
- The long term care facility could accept medications as they were dispensed from the first pharmacy and place the medications in dose cups for administration to the patients.

However, these options are not feasible for either the pharmacies or the long term care facilities. It is a liability issue for the original dispensing pharmacy to provide a duplicate label, and long term care facilities are concerned with patient safety when asked to return to dose cups.

The Board commented that an alternate solution might be for the second pharmacy to create a label with the information of the original dispensing pharmacy and to add an auxiliary label that indicates the drug was “repackaged by” the second pharmacy. Barr stated that even though it would take more work, it would be best to have the labels with information for both pharmacies on the prescription container.

Cover had spoken with Pharmacist Mutual regarding repackaging because of the concern for the liability of the pharmacy. Pharmacist Mutual said if there was something in State law that would allow repackaging, they would be more likely to cover the pharmacy’s liability than if there was nothing in State law to address repackaging. Cover suggested that the Board of Pharmacy establish guidelines that would help with the liability. Wisell commented that regulations would be more enforceable than guidelines.

The Board advised for repackaging to include the name, address, telephone number and prescription number of the original dispensing pharmacy on the label of the repackaged medication. The label must also contain the name, address, telephone number and prescription number of the second pharmacy, with a statement that the medication was repackaged by that pharmacy. The Board indicated that this issue would be on the agenda at the September meeting.

## **UPDATED PHARMACY TECHNICIAN MANUAL, JUNE 2005**

Wisell thanked Cover, Hospodka, and the Nebraska Pharmacists Association for updating the technician manual. The Nebraska Pharmacists Association makes the manual available for a fee to all pharmacies that want to utilize pharmacy technicians. The pharmacy regulations do not require that this model be used, but many pharmacies use this model rather than creating their own.

## **COMMITTEE REPORTS**

### **MPJE**

Borcher and Klein attended the MPJE item writing workshop in Chicago. Borcher mentioned that there should be two committee members that attend the item writing workshop and two other members should attend the question review meeting each year. Borcher also suggested rotating the members between the two meetings so that one Board member and one Pharmacy Inspector attend each time. Both Borcher and Klein came up with 35 questions. Borcher mentioned that this was the first time that all the questions were accessible to be reviewed. Klein and Borcher felt the training went well.

### **TRI-Partite Committee on Internship**

There is no report at this time.

### **Formulary Advisory Committee**

Wisell stated that the following committee members were re-appointed: Philip Medina, Marty Christensen, Beth Wilson, and Eloise Pointer. Wisell also stated that there was a new member appointed, Ann Elizabeth Johnson, RN, CNP, VSN. Wisell stated that the last time the committee met was December of 2004.

### **NABP ANNUAL MEETING**

Barr stated that the Annual Meeting survey is completed and the results will be presented at the NABP District meetings. There is now a new non-pharmacist board member at NABP, Patricia Harris, a lawyer from California. Wisell offered to send notices the Department receives from NABP to the Board members as they are received. This practice would reduce the amount of material sent with the meeting agendas, and Board members could notify Wisell or Apking of any items they would like added to the agenda. Barr suggested to request that these notices be sent electronically by NABP so that Wisell could easily forward them to the Board members.

### **NABP DISTRICT V MEETING, August 11-13, 2005**

Wisell will inform the Board members as soon as travel approval is granted. Labenz mentioned that she would be unable to attend the meeting. The Department will pay the registration fee for the Board members attending.

### **CITIZEN ADVOCACY CENTER 2005 ANNUAL MEETING**

Karen Bowen, the Nursing Practice Consultant for the Department, plans to attend the Board of Pharmacy meeting on November 7<sup>th</sup> to present the Board of Nursing's pain management guidelines. Ms. Bowen also plans to attend the Citizen Advocacy Center meeting where pain management guidelines will be discussed. The Board requested that they receive a copy of the Board of Medicine and Surgery's pain management guidelines also. **Action Item: Staff will forward copies of the pain management guidelines for both the Board of Medicine and Surgery and the Board of Nursing.**

### **AMERICAN INSTITUTE OF THE HISTORY OF PHARMACY**

Wisell asked the Board if they would like to nominate anyone for the History of Pharmacy Award. Barr stated he would like to nominate Kenneth Kunce, R.P. and Creighton University School of Pharmacy and Health Professions. Creighton is celebrating their centennial anniversary and has created a history wall from 1905 to present. The information should be given to Mr. Kunce to see if he would like to self-nominate, and Barr will nominate Creighton.

### **FINANCIAL REPORT**

Wisell reviewed with the Board the budget status report for the end of fiscal year 05 (June 2005). Wisell also informed the Board that the transfer of funds from the pharmacist licensure fund to the pharmacy facilities licensure fund has been made. The current cash balance for pharmacist licensure is approximately \$428,000. The Board

discussed that some of the states now do not require a pharmacist to keep their original state of licensure active and that this could impact the budget in the future.

### **ACTION ITEMS**

Wisell informed the Board that Vonda Apking will be returning on August 1<sup>st</sup> and will resume responsibility of the action items. The Board decided to discuss other mechanisms for continuing competency in more detail at the September 12<sup>th</sup> meeting in Omaha. **Action Item: E-mail Barr information on continuing competency.**

Barr stated that the Pharmacist Self-Assessment Mechanism (PSAM) is now available for pharmacists to take. This is a competency test that pharmacists can take that is offered by NABP. The results are given only to the pharmacist and are not identifiable. The cost for the test is \$75.00 and it can be retaken within 90 days. Barr mentioned that some states give continuing education credit to pharmacists for taking this examination. Barr mentioned that some states are using the examination instead of the NAPLEX for pharmacists that are being disciplined. The Board discussed having the Board members take the examination to see if it could be used for pharmacists in Nebraska. **Action Item: Staff to find out whether the Board could pay the fee for the PSAM examination so that the Board members could take the examination to see if they can use it as a requirement under disciplinary actions.**

### **CORRESPONDENCE AND GENERAL INFORMATION**

Wisell commented that Bob Semerena brought a news article regarding the Florida Department of Law Enforcement cracking down on prescription drug abusers. The article discussed how people were obtaining drugs without going to a physician. Semerena was concerned that pharmacists were not catching forged prescriptions. The National Center on Addition and Substance Abuse released a study that showed 28.4% of pharmacists do not regularly validate a physician's DEA number or identification number when they fill a prescription, and 10.5% rarely or never do so. The percentages are not just the from State of Florida but are nationwide.

Klein stated that in Nebraska, the computer will check automatically. The Board discussed that if it is a first time prescription, the pharmacist should call and verify the information.

### **ADJOURNMENT**

Kaczmarek moved, seconded by Barr, to adjourn the meeting at 5:15 p.m. Voting aye: Barr, Borchers, Labenz, Zarek. Voting nay: None. Motion carried.

Respectfully submitted,

(Signature on file with the Department)

Kevin Borchers, R.P., Secretary  
Nebraska Board of Pharmacy